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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

WILLARD HAZELTON, an individual,

Plaintiff,

vs.

HEALTHEQUITY, INC., a Delaware
corporation, and DOES 1-10, inclusive,
Defendants.

Case No. 2:23-cv-00411 MEMF (PDx)

**STIPULATED PROTECTIVE
ORDER¹**

Trial Date: 5/13/24

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Patricia Donahue's Procedures.

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, Plaintiff Willard Hazelton and Defendant HealthEquity, Inc.
6 (hereinafter, “the Parties”) hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The Parties acknowledge that this Order does
8 not confer blanket protections on all disclosures or responses to discovery and that
9 the protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles.

12 B. GOOD CAUSE STATEMENT

13 This action is likely to involve third party information and other valuable
14 development, commercial, financial, technical and/or proprietary information for
15 which special protection from public disclosure and from use for any purpose other
16 than prosecution of this action is warranted. Such confidential and proprietary
17 materials and information consist of, among other things, confidential business or
18 financial information, information regarding confidential business practices, or other
19 confidential research, development, or commercial information (including
20 information implicating privacy rights of third parties), information otherwise
21 generally unavailable to the public, or which may be privileged or otherwise
22 protected from disclosure under state or federal statutes, court rules, case decisions,
23 or common law. Accordingly, to expedite the flow of information, to facilitate the
24 prompt resolution of disputes over confidentiality of discovery materials, to
25 adequately protect information the Parties are entitled to keep confidential, to ensure
26 that the Parties are permitted reasonable necessary uses of such material in
27 preparation for and in the conduct of trial, to address their handling at the end of the
28 litigation, and serve the ends of justice, a protective order for such information is

1 justified in this matter. It is the intent of the Parties that information will not be
2 designated as confidential for tactical reasons and that nothing be so designated
3 without a good faith belief that it has been maintained in a confidential, non-public
4 manner, and there is good cause why it should not be part of the public record of this
5 case.

6 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

7 The Parties further acknowledge, as set forth in Section 12.3, below, that this
8 Stipulated Protective Order does not entitle them to file confidential information
9 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
10 the standards that will be applied when a party seeks permission from the court to file
11 material under seal.

12 There is a strong presumption that the public has a right of access to judicial
13 proceedings and records in civil cases. In connection with non-dispositive motions,
14 good cause must be shown to support a filing under seal. See Kamakana v. City and
15 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors
16 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electronics, Inc.,
17 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
18 cause showing), and a specific showing of good cause or compelling reasons with
19 proper evidentiary support and legal justification, must be made with respect to
20 Protected Material that a party seeks to file under seal. The Parties' mere designation
21 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
22 submission of competent evidence by declaration, establishing that the material
23 sought to be filed under seal qualifies as confidential, privileged, or otherwise
24 protectable—constitute good cause.

25 Further, if a party requests sealing related to a dispositive motion or trial, then
26 compelling reasons, not only good cause, for the sealing must be shown, and the relief
27 sought shall be narrowly tailored to serve the specific interest to be protected. See
28 Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item

1 or type of information, document, or thing sought to be filed or introduced under seal
 2 in connection with a dispositive motion or trial, the party seeking protection must
 3 articulate compelling reasons, supported by specific facts and legal justification, for
 4 the requested sealing order. Again, competent evidence supporting the application to
 5 file documents under seal must be provided by declaration.

6 Any document that is not confidential, privileged, or otherwise protectable in
 7 its entirety will not be filed under seal if the confidential portions can be redacted. If
 8 documents can be redacted, then a redacted version for public viewing, omitting only
 9 the confidential, privileged, or otherwise protectable portions of the document, shall
 10 be filed. Any application that seeks to file documents under seal in their entirety
 11 should include an explanation of why redaction is not feasible.

12 2. DEFINITIONS

13 2.1 Action: this pending federal law suit bearing case number: 2:23-cv-
 14 00411 MEMF (PDx)

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation
 16 of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 18 how it is generated, stored or maintained) or tangible things that qualify for protection
 19 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
 20 Cause Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
 22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or
 24 items that it produces in disclosures or in responses to discovery as
 25 “CONFIDENTIAL.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of
 27 the medium or manner in which it is generated, stored, or maintained (including,
 28 among other things, testimony, transcripts, and tangible things), that are produced or

1 generated in disclosures or responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as
4 an expert witness or as a consultant in this Action.

5 2.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association, or
9 other legal entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a party
11 to this Action but are retained to represent or advise a party to this Action and have
12 appeared in this Action on behalf of that party or are affiliated with a law firm which
13 has appeared on behalf of that party, and includes support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors,
15 employees, consultants, retained experts, and Outside Counsel of Record (and their
16 support staffs).

17 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
18 Discovery Material in this Action.

19 2.13 Professional Vendors: persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)
22 and their employees and subcontractors.

23 2.14 Protected Material: any Disclosure or Discovery Material that is
24 designated as “CONFIDENTIAL.”

25 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
26 from a Producing Party.

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also (1) any information copied or extracted
2 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
3 Protected Material; and (3) any testimony, conversations, or presentations by Parties
4 or their Counsel that might reveal Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of the
6 trial judge. This Order does not govern the use of Protected Material at trial.

7 4. DURATION

8 FINAL DISPOSITION of the action is defined as the conclusion of any
9 appellate proceedings, or, if no appeal is taken, when the time for filing of an appeal
10 has run. Except as set forth below, the terms of this protective order apply through
11 FINAL DISPOSITION of the action. The Parties may stipulate that they will be
12 contractually bound by the terms of this agreement beyond FINAL DISPOSITION,
13 but will have to file a separate action for enforcement of the agreement once all
14 proceedings in this case are complete.

15 Once a case proceeds to trial, information that was designated as
16 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
17 as an exhibit at trial becomes public and will be presumptively available to all
18 members of the public, including the press, unless compelling reasons supported by
19 specific factual findings to proceed otherwise are made to the trial judge in advance
20 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”
21 showing for sealing documents produced in discovery from “compelling reasons”
22 standard when merits-related documents are part of court record). Accordingly, for
23 such materials, the terms of this protective order do not extend beyond the
24 commencement of the trial.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that
3 qualify so that other portions of the material, documents, items, or communications
4 for which protection is not warranted are not swept unjustifiably within the ambit of
5 this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper
8 purpose (e.g., to unnecessarily encumber the case development process or to impose
9 unnecessary expenses and burdens on other parties) may expose the Designating Party
10 to sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the inapplicable designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic
21 documents, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), that the Producing Party affix at a minimum, the legend
23 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
24 contains protected material. If only a portion or portions of the material on a page
25 qualifies for protection, the Producing Party also must clearly identify the protected
26 portion(s) (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

1 which documents it would like copied and produced. During the inspection and before
 2 the designation, all of the material made available for inspection shall be deemed
 3 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 4 copied and produced, the Producing Party must determine which documents, or
 5 portions thereof, qualify for protection under this Order. Then, before producing the
 6 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
 7 to each page that contains Protected Material. If only a portion or portions of the
 8 material on a page qualifies for protection, the Producing Party also must clearly
 9 identify the protected portion(s) (e.g., by making appropriate markings in the
 10 margins).

11 (b) for testimony given in depositions that the Designating Party identify the
 12 Disclosure or Discovery Material on the record, before the close of the deposition all
 13 protected testimony.

14 (c) for information produced in some form other than documentary and for
 15 any other tangible items, that the Producing Party affix in a prominent place on the
 16 exterior of the container or containers in which the information is stored the legend
 17 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 18 protection, the Producing Party, to the extent practicable, shall identify the protected
 19 portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 21 failure to designate qualified information or items does not, standing alone, waive the
 22 Designating Party’s right to secure protection under this Order for such material.
 23 Upon timely correction of a designation, the Receiving Party must make reasonable
 24 efforts to assure that the material is treated in accordance with the provisions of this
 25 Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 28 designation of confidentiality at any time that is consistent with the Court’s

1 Scheduling Order.

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
3 resolution process under Local Rule 37.1 et seq.

4 6.3 The burden of persuasion in any such challenge proceeding shall be on
5 the Designating Party. Frivolous challenges, and those made for an improper purpose
6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
7 expose the Challenging Party to sanctions. Unless the Designating Party has waived
8 or withdrawn the confidentiality designation, all parties shall continue to afford the
9 material in question the level of protection to which it is entitled under the Producing
10 Party's designation until the Court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this
14 Action only for prosecuting, defending, or attempting to settle this Action. Such
15 Protected Material may be disclosed only to the categories of persons and under the
16 conditions described in this Order. When the Action has been terminated, a Receiving
17 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
26 as employees of said Outside Counsel of Record to whom it is reasonably necessary
27 to disclose the information for this Action;

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this Action;

2 (c) Experts (as defined in this Order) of the Receiving Party to whom
3 disclosure is reasonably necessary for this Action and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

7 (f) professional jury or trial consultants, mock jurors, and Professional
8 Vendors to whom disclosure is reasonably necessary for this Action and who have
9 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
13 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
14 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
15 not be permitted to keep any confidential information unless they sign the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
17 agreed by the Designating Party or ordered by the court. Pages of transcribed
18 deposition testimony or exhibits to depositions that reveal Protected Material may be
19 separately bound by the court reporter and may not be disclosed to anyone except as
20 permitted under this Stipulated Protective Order; and

21 (i) any mediator or settlement officer, and their supporting personnel,
22 mutually agreed upon by any of the Parties engaged in settlement discussions.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation
26 that compels disclosure of any information or items designated in this Action as
27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order to
3 issue in the other litigation that some or all of the material covered by the subpoena
4 or order is subject to this Protective Order. Such notification shall include a copy of
5 this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued
7 by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served
9 with the subpoena or court order shall not produce any information designated in this
10 action as “CONFIDENTIAL” before a determination by the court from which the
11 subpoena or order issued, unless the Party has obtained the Designating Party’s
12 permission. The Designating Party shall bear the burden and expense of seeking
13 protection in that court of its confidential material and nothing in these provisions
14 should be construed as authorizing or encouraging a Receiving Party in this Action to
15 disobey a lawful directive from another court.

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-
19 Party in this Action and designated as “CONFIDENTIAL.” Such information
20 produced by Non-Parties in connection with this litigation is protected by the
21 remedies and relief provided by this Order. Nothing in these provisions should be
22 construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
24 produce a Non-Party’s confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party’s
26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party
28 that some or all of the information requested is subject to a confidentiality agreement

1 with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated
3 Protective Order in this Action, the relevant discovery request(s), and a reasonably
4 specific description of the information requested; and

5 (3) make the information requested available for inspection by the Non-
6 Party, if requested.

7 (c) If the Non-Party fails to seek a protective order from this court within 14
8 days of receiving the notice and accompanying information, the Receiving Party may
9 produce the Non-Party's confidential information responsive to the discovery request.
10 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
11 any information in its possession or control that is subject to the confidentiality
12 agreement with the Non-Party before a determination by the court. Absent a court
13 order to the contrary, the Non-Party shall bear the burden and expense of seeking
14 protection in this court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this Order,
22 and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without prior
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
4 Parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 Parties may incorporate their agreement in the stipulated protective order submitted
7 to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the specific
19 Protected Material at issue. If a Party's request to file Protected Material under seal is
20 denied by the court, then the Receiving Party may file the information in the public
21 record unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in this
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving Party

1 must submit a written certification to the Producing Party (and, if not the same person
2 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
3 category, where appropriate) all the Protected Material that was returned or destroyed
4 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or any other format reproducing or capturing any of the
6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing
8 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
9 reports, attorney work product, and consultant and expert work product, even if such
10 materials contain Protected Material. Any such archival copies that contain or
11 constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

13 14. Any violation of this Order may be punished by any and all appropriate
14 measures including, without limitation, contempt proceedings and/or monetary
15 sanctions.

16
17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18
19 DATED: May 23, 2023

CASKEY & HOLZMAN

20
21
22 By: /s/ N. Cory Barari

23 Marshall A. Caskey

24 Daniel M. Holzman

25 N. Cory Barari

26 Attorneys for Plaintiff, WILLARD

27 HAZELTON
28

1 DATED: May 23, 2023

BARBER RANEN LLP

2
3
4 By: /s/ John Haubrich, Jr.

John L. Barber

5 John Haubrich, Jr.

6 Tiffany H. Rouhi

7 Attorneys for Defendant,

8 HEALTHEQUITY, INC.

9
10
11 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

12
13
14 DATED: May 25, 2023

Patricia Donahue

15 Patricia Donahue

16 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that
 I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Central District of California on
 [date] in the case of Hazelton v. HealthEquity, Inc. (Case No. 2:23-cv-00411 MEMF
 (PDx)) I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
 that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print or type full address and telephone number] as
 my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____